

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:04

PLR-120372-07

Date:

July 26, 2007

Legend

Parent =

Distributing =

Controlled =

Sub 1 =

Sub 2 =

Business A =

Business B =

Segment A =

Segment B =

a =

State A =

Dear :

This letter responds to your April 27, 2007 letter requesting rulings on certain federal income tax consequences of a series of completed transactions. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the series of completed transactions: (i) satisfied the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) was used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code and §1.355-2(d)); and (iii) was part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and §1.355-7).

Summary of Facts

Parent is the common parent of an affiliated group of corporations that join in the filing of a consolidated federal income tax return. Parent wholly owns each of Distributing and Sub 1. Parent owns a percent of Sub 2, and Distributing owns the remaining stock interest of Sub 2. Each of Distributing, Sub 1, and Sub 2 joins in filing a consolidated federal income tax return with Parent.

Distributing wholly owns Controlled, which is treated as an entity that is disregarded as separate from Distributing for federal income tax purposes. Controlled is engaged in Business A, which is a component of Segment A. Sub 1 is engaged in another sub-business of Segment A. Sub 2 is engaged in Business B, which is a component of Segment B.

Financial information has been received indicating that each of Business A (as conducted by Controlled) and Business B (as conducted by Sub 2) has each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the five years preceding the Distribution (defined below).

Completed Transaction

To achieve the stated corporate business purpose, Parent has engaged in the following steps (the "Completed Transaction"):

- (i) Parent contributed its a percent interest in the Sub 2 stock to Distributing in exchange for no additional consideration.
- (ii) Sub 2 converted to a limited liability company under State A law. (Steps (i) and (ii), collectively, the "Sub 2 Reorganization").
- (iii) Controlled filed a valid Form 8832, Entity Classification Election, to be treated as an association taxable as a corporation for federal income tax purposes (the "Controlled Election"). As a result of this election, Distributing was deemed to have contributed all of the Business A assets and liabilities formerly held by disregarded Controlled to Controlled in exchange for all of the stock of Controlled (the "Contribution").
- (iv) Distributing distributed all of the Controlled stock to Parent (the "Distribution").

Immediately following the Distribution, Parent combined the operations of Segment A by combining the operations of Controlled and Sub 1 through a merger of Controlled with and into Sub 1 under State A law, with Controlled ceasing to exist (the "Controlled Merger").

Representations

The taxpayer makes the following representation regarding the Sub 2 Reorganization:

- (a) The Sub 2 Reorganization constituted an acquisitive reorganization within the meaning of § 368(a)(1)(D). Distributing and Sub 2 each was "a party to a reorganization" within the meaning of § 368(b).

The taxpayer makes the following representations regarding the Contribution and Distribution:

- (b) The indebtedness, if any, owed by Controlled to Distributing after the Distribution did not constitute stock or securities.
- (c) No part of the consideration distributed by Distributing was received by Parent as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(d) Each of Distributing, Controlled, and Parent paid its own expenses, if any, incurred in connection with the Contribution and Distribution.

(e) No person held or holds a 50 percent or greater interest in the stock of Distributing or the limited liability company membership interests in Controlled, or stock of Controlled, after the Distribution within the meaning of § 355(g), who did not hold such interest immediately before the transaction.

(f) The five years of financial information submitted on behalf of Distributing's Business B is representative of the corporation's present operations, and with regard to Distributing's Business B, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) The five years of financial information submitted on behalf of Controlled is representative of the limited liability company's present operations, and with regard to Controlled, there have been no substantial operational changes since the date of the last financial statements submitted.

(h) Following the Completed Transaction, Distributing (through Sub 2, an entity disregarded as separate from Distributing for federal income tax purposes) has continued the active conduct of its Business B independently and with its separate employees or employees of the other members of its affiliated group.

(i) Following the Completed Transaction, Controlled has continued the active conduct of its Business A, independently and with its separate employees or employees of the other members of its affiliated group.

(j) The Distribution was carried out for the following corporate business purpose: to preserve Distributing's significant state NOLs that it may utilize to offset future taxable income in the states in which it is required to file a return while at the same time allowing the separation of Controlled, a legal entity involved in Segment A, and Distributing, a legal entity involved in Segment B. The Distribution was motivated, in whole or substantial part, by this corporate business purpose.

(k) The Completed Transaction was not used principally as a device for the distribution of the earnings and profits of Distributing or Controlled or both.

(l) The total adjusted bases and the fair market value of the assets transferred to Controlled by Distributing in the deemed contribution each equaled or exceeded the sum of the liabilities assumed (as determined under § 357(d)) by Controlled in the deemed contribution plus any liabilities to which the transferred assets were subject. The fair market value of the assets of Controlled exceeded the amount of its liabilities after the exchange.

(m) The liabilities assumed (as determined under § 357(d)), if any, in the Completed Transaction and the liabilities to which the transferred assets are subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(n) No intercorporate debt existed between Distributing and Controlled at the time of, or subsequent to, the Distribution.

(o) Immediately before the Distribution, items of income, gain, loss, deduction, and credit were taken into account as required by the applicable intercompany transaction regulations. Further, Distributing's excess loss account with respect to the stock of Controlled, if any, were included in income before the Distribution (see § 1.1502-19).

(p) Payments made in connection with all continuing transactions, if any, between Distributing and Controlled, were for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(q) No two parties to the Completed Transaction were investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(r) Other than the Controlled Merger, the Completed Transaction was not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire, directly or indirectly, stock or limited liability company membership interests, as applicable, representing a 50 percent or greater interest (within the meaning of § 355(d)(4)) in Distributing or Controlled (including any predecessor or successor of any such corporation).

(s) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) holds stock possessing 50 percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(t) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) holds limited liability company membership interests possessing 50 percent or more of the total combined voting power of all classes of Controlled limited liability company membership interests entitled to vote, or 50 percent or more of the total value of all classes of Controlled limited liability company membership interests, that were either (i) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution, or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in §§ 355(d)(5) and (8))

during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

The taxpayer makes the following representation regarding the Controlled Merger:

(u) The Controlled Merger constituted an acquisitive reorganization within the meaning of § 368(a)(1)(A) and 368(a)(1)(D). Controlled and Sub 1 each was "a party to a reorganization" within the meaning of § 368(b).

Rulings

Based solely upon the information submitted and the representations made, we rule as follows on the Contribution and Distribution:

(1) The Contribution followed by the Distribution is a reorganization within the meaning of § 368(a)(1)(D). Distributing and Controlled will each be "a party to a reorganization" within the meaning of § 368(b).

(2) No gain or loss is recognized by Distributing on the deemed contribution of the assets owned by Controlled to Controlled in exchange for Controlled stock and the assumption by Controlled of Distributing liabilities (§§ 361(a) and 357(c)).

(3) No gain or loss is recognized by Controlled on the deemed receipt of the assets from Distributing in exchange for Controlled limited liability company membership interests (§ 1032(a)).

(4) The basis of each asset received by Controlled equals the basis of that asset in the hands of Distributing immediately before the contribution of such assets (§ 362(b)).

(5) The holding period of each asset received by Controlled in the deemed contribution of the assets includes the period during which that asset was held by Distributing (§ 1223(2)).

(6) No gain or loss is recognized by (and no amount will be included in the income of) Parent on its receipt of Controlled stock (§ 355(a)(1)).

(7) No gain or loss is recognized by Distributing upon the distribution to Parent of all of the Controlled stock (§ 361(c)).

(8) The aggregate basis of the Distributing stock and the Controlled stock (including fractional share interests to which the shareholders may be entitled) in the hands of Parent after the Distribution equals the aggregate basis of the Distributing stock held by Parent immediately before the Distribution, allocated between the

Distributing stock and the Controlled stock in proportion to the fair market value of each in accordance with § 1.358-2(a)(2) (§§ 358(b) and (c)).

(9) The holding period of the Controlled stock (including fractional share interests to which the shareholders may be entitled) received by Parent includes the holding period of the Distributing common stock on which the Distribution is made, provided the Distributing common stock was held as a capital asset on the date of the Distribution (§ 1223(1)).

(10) Earnings and profits will be allocated between Distributing and Controlled in accordance with § 312(h) and §1.312-10(a).

Caveats

No opinion is expressed about the tax treatment of the completed transaction described above under other provisions of the Code and regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the completed transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution described above satisfied the business purpose requirement of §1.355-2(b); (ii) whether the Distribution was used principally as a device for the distribution of the earnings and profits of any or all of Distributing or Controlled or both; (iii) whether the Distribution was part of a plan (or series of related transactions) under § 355(e)(2)(A)(ii); (iv) the federal income tax consequences of the Sub 2 Reorganization and the Controlled Merger.

Procedural Statements

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the power of attorney on file in this office, a copy of this ruling letter will be sent to your authorized representative.

Sincerely,

Richard K. Passales

Richard K. Passales
Senior Counsel, Branch 4
Associate Chief Counsel (Corporate)